



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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Construction Products, Inc.	Columbus, OH	1
Jupiter Medical Center Pavilion	Jupiter, FL	1

OTHER CONTENTS

List of Decisions of Administrative Law Judges	2
List of Unpublished Board Decisions and Orders in Representation Cases	3
<ul style="list-style-type: none">• Contested Reports of Regional Directors and Hearing Officers• Uncontested Reports of Regional Directors and Hearing Officers• Requests for Review of Regional Directors' Decisions and Directions of Elections and Decisions and Orders	

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Construction Products, Inc. (9-CA-40056, 40294; 346 NLRB No. 60) Columbus, OH March 13, 2006. The Board affirmed the administrative law judge's finding and held that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Richard Carper and Anthony Richards because of their union activities. It agreed with the judge that the General Counsel satisfied his initial burden of proving that union activity was the motivating factor in the Respondent's decision to discharge them. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981). The Respondent failed to prove that it would have discharged the two employees absent their union activities. [\[HTML\]](#) [\[PDF\]](#)

The Board approved the judge's finding that the Respondent violated Section 8(a)(3) and (1) by refusing to hire Fred Clapper, Gregory Coe, Todd Hoffman, James Jackson, Mary Miller, and Larry Seymour Jr., and his dismissal of the allegation that the Respondent violated the Act by refusing to hire Kurt Thompson.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Iron Workers Local 172; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Columbus on Sept. 25, 2003. Adm. Law Judge Ira Sandron issued his decision Dec. 29, 2003.

Jupiter Medical Center Pavilion (12-CA-22478, et al.; 346 NLRB No. 61) Jupiter, FL March 13, 2006. The Board agreed with the administrative law judge that the Respondent lawfully instructed certified nursing assistant (CNA) Dieuseul Mirtil to take off his union button while he was working with a patient, noting that in the health care industry, rules prohibiting the wearing of buttons in patient care areas are presumptively valid, and that the Respondent lawfully chose to put a premium on patient safety. [\[HTML\]](#) [\[PDF\]](#)

The Board also agreed with the judge that the Respondent lawfully disciplined CNA Paula Thimot on three occasions, but it explained its reasons for finding a violation regarding the discipline imposed on Oct. 15, 2002. In her partial dissenting opinion, Member Liebman contended that her colleagues erred in finding that the Respondent lawfully disciplined union supporter Thimot for her role in two confrontations with coworkers. She wrote: "Because the judge made no factual findings or explicit credibility determination concerning those episodes and did not analyze the evidence in light of relevant law, and because the record evidence arguably would support finding a violation, we should remand that issue."

Contrary to the judge, Chairman Battista and Member Liebman, with Member Schaumber dissenting, found that the Respondent violated Section 8(a)(1) by impliedly threatening to discharge Thimot by suggesting that she leave rather than engage in union activity.

The implied threat of discharge occurred after the Respondent's administrator, Jay Mikosch, and Director of Nursing Linda Nelson held a meeting with employees on Sept. 26, 2002, to present arguments against union representation. Thimot commented that the Respondent spent a lot of time and money trying to find out who started the Union instead of

figuring out the problems. Nelson commented that Thimot “seem[ed] unhappy here,” and Thimot responded that Nelson would be unhappy if she had to work under the same conditions. Thereafter, Nelson asked each employee at the meeting how long they had worked for the Respondent and after learning that Thimot was relatively new, Nelson told Thimot “Maybe this isn’t the place for you . . . there are a lot of jobs out there.” Thimot questioned whether that was the solution, and Nelson answered, “If you are unhappy here, and you seem to be unhappy, then yes.”

Member Schaumber wrote: “Not only did Nelson’s remark not occur in a context of other severe unfair labor practices; the evidence indicates that the Respondent tolerated open and vigorous discussion and support of the Union among its employees. . . . Thimot never experienced retaliation from the Respondent for her pronunion views.” Given the totality of circumstances, he did not find that Nelson’s ambiguous statements could reasonably be interpreted as threats.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Service Employees District 1199 Florida; complaint alleged violation of Section 8(a)(1). Hearing at Miami, Aug. 18-19, 2003. Adm. Law Judge Keltner W. Locke issued his decision Sept. 22, 2003.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

The Continental Group, Inc., et al. (Service Employees Local 11) Miami Beach and Hollywood, FL March 15, 2006. 12-CA-24045, et al.; JD(ATL)-07-06, Judge George Carson II.

Teamsters Local 917 (Peerless Importers, Inc.) Brooklyn, NY March 15, 2006. 29-CE-128; JD(NY)-13-06, Judge Raymond P. Green.

USA Remediation Services, Inc. (Laborers Mid-Atlantic Regional Organizing Coalition) Warrenton, VA March 15, 2006. 5-CA-31524; JD-20-06, Judge C. Richard Miserendino.

National Steel & Shipbuilding Co. (Boilermakers) San Diego, CA March 15, 2006. 21-CA-36772; JD(SF)-15-06, Judge John J. McCarrick.

California Almond Growers Exchange d/b/a Blue Diamond Growers (Longshoremen [ILWU] Local 17) Sacramento, CA March 17, 2006. 20-CA-32583; JD(SF)-14-06, Judge Jay R. Pollack.

Power Services Co. (Electrical Workers [IBEW] Local 94) Philadelphia, PA March 17, 2006. 4-CA-32939, 33415; JD-21-06, Judge Paul Buxbaum.

**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS
IN REPRESENTATION CASES**

*(In the following cases, the Board considered exceptions to and
adopted Reports of Regional Directors or Hearing Officers)*

**DECISION AND DIRECTION [that Regional Director
open and count challenged ballots]**

*Cooperative de Ahorro y Credito de Isabela, Isabela, PR, 24-RC-8489, March 16, 2006
(Chairman Battista and Members Schaumber and Walsh)*

*(In the following cases, the Board adopted Reports of
Regional Directors or Hearing Officers in the absence of exceptions)*

**DECISION, ORDER, AND CERTIFICATION OF
RESULTS OF ELECTION**

*Oris Automotive AL, Ltd., Oris, AL, 10-RC-15544, March 14, 2006 (Members Liebman,
Schaumber, and Kirsanow)*

**DECISION AND DIRECTION [that Regional Director
open and count challenged ballot]**

*Morovis Community Health Center, Inc., Morovis, PR, 24-RC-8499, March 14, 2006
(Members Liebman, Schaumber, and Kirsanow)*

*(In the following cases, the Board granted requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)*

*Shaw's Supermarkets, Mansfield, MA, 1-RM-1267, March 15, 2006 (Chairman Battista and
Member Kirsanow; Member Liebman dissenting)*

***(In the following cases, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)***

Automotive Components Holdings, LLC, Indianapolis, IN, 25-RC-10309, March 15, 2006
(Chairman Battista and Members Liebman and Schaumber)

Levy Indiana Slag Co., East Chicago, IL, 13-RC-21437, et al., March 15, 2006
(Members Liebman, Schaumber, and Kirsanow)

Wesport Inn, Westport, CT, 34-RC-2162, March 15, 2006 (Members Liebman, Schaumber, and
Kirsanow)
